IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Confirmation No.: 7404
BRETSCHNEIDER *et al.*	Art Unit: 1614
Appl. No.: 10/594,251	Examiner: Kahsay Habte
Filed: September 10, 2007	Atty. Docket: 2400.0800000/JMC/CMB
For: **2,4,6-Phenyl-Substituted Cyclic Ketoenols**	

Reply to Restriction Requirement

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated February 1, 2010, requesting an election of one invention to prosecute in the above-referenced patent application, Applicant hereby provisionally elects to prosecute the invention of Group III, represented by claims 1-6, 27-28, 30-33 and 35. Applicant also hereby provisionally select compound I-1-a-3 ***for search purposes only***. The selection of compound I-1-a-3 is not to be construed as limiting prosecution to this single compound. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

This election is made **with traverse**.

This application is a National Phase Entry Under 35 U.S.C. § 371 and, as such, PCT Rule 13 requiring unity of invention applies.

The Examiner has stated that the claims lack unity of invention since the claims allegedly are not so linked within the meaning of PCT Rules 13.1 and 13.2 so as to form a single inventive concept. Applicants respectfully disagree, and direct attention to section 1850 of the Manual for Patenting Examining Procedure, which states:

> Although lack of unity of invention should be raised in clear cases, it should neither be raised nor maintained on the basis of narrow, literal, or academic approach. For determining the action to be taken by the examiner…rigid rules cannot be given and each case should be considered on its merits, *the benefit of any doubt being given to the applicant*. (emphasis added)

MPEP § 1850 (II)(paragraph 4).

The claims of the instant application do not qualify as a "clear case" of lacking unity of invention. Each claim shares the special technical feature of being related to 2,4,6-phenyl-substituted cyclic ketoenol compounds. As stated above the benefit of *any* doubt with respect to unity of invention must be given to the applicant. Applicants therefore respectfully submit that a compound of formula I represents a special technical feature and unity of invention exists between claims 1-3.

Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Cynthia M. Bouchez
Attorney for Applicants
Registration No. 47,438

Date: March 1, 2010

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600
cbouchez@skgf.com
1084261v1